

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MORTIMER EXCELL,

Plaintiff,

-against-

9:05-CV-1231
(LEK/GJD)

J.W. BURGE, et al.,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on September 10, 2008, by the Honorable Gustave J. DiBianco, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 52).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. No objections have been raised in the allotted time with respect to Judge DiBianco's Report-Recommendation. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 52) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that Defendants' Motion for summary judgment (Dkt. No. 39) is **GRANTED**

IN PART, and that the complaint is **DISMISSED** in its **ENTIRETY** as against Defendants Head and Rourke; and it is further

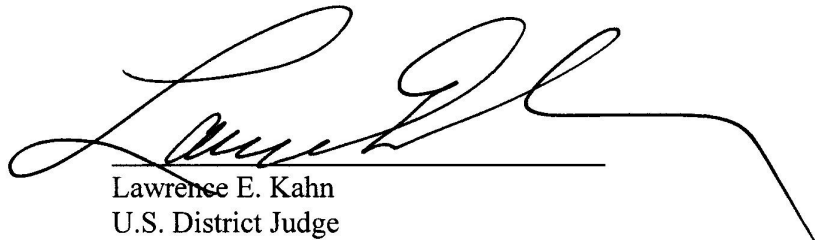
ORDERED, that Plaintiff's First Cause of Action is **DISMISSED** as against Defendants Hess, Devito, Bray, and Sourwine; and it is further

ORDERED, that the Defendants' Motion for summary judgment (Dkt. No. 39) is **DENIED** in all other respects; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: September 25, 2008
Albany, New York



Lawrence E. Kahn
U.S. District Judge